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10/657,983	09/09/2003	Stephanie Myrick	DC-05301	1299
33438	7590	02/24/2009	EXAMINER	
HAMILTON & TERRILE, LLP			STERRETT, JONATHAN G	
P.O. BOX 203518			ART UNIT	PAPER NUMBER
AUSTIN, TX 78720			3623	
NOTIFICATION DATE		DELIVERY MODE		
02/24/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

[tmunoz@hamiltonterrile.com](mailto:tmunoz@hamiltonterrile.com)

## DETAILED ACTION

### *Summary*

1. This **Advisory Action** is responsive to 6 February 2009. Currently **Claims 1-20** are pending in the application.

### *Response to Argument*

The applicant argues that the claims are statutory re 35 USC 101 because they provide a physical transformation.

The examiner respectfully disagrees.

Transferring a product does not transform the product because the product is still the same. It is the same "thing" and is in the same "state", i.e. a product. If the product was changed from one state to another (e.g. a chemical transformation like vulcanization or polymerization or some other elemental change), then the product would be transformed. Simply transporting a product does not meet the criteria of a physical transformation.

The applicant argues that Joao fails to teach where the decision of whether or what to report is made by a receiver, because a computer is not a receiver.

The examiner respectfully disagrees.

There is nothing in the claims that positively recites that the receiver be a human being or a person. Even if this recitation was in the claims, the claimed functionality of reporting would be the same and thus either way the recitation would not distinguish patentably over Joao.

The applicant argues that the examiner relies on hindsight reasoning.

The examiner respectfully disagrees.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

#### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on 571-272-6737. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published

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JGS 2-17-2009

/Jonathan G. Sterrett/

Primary Examiner, Art Unit 3623